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EX PARTE SUBMISSION

William F. Caton
Acting Secretary
1919 M Street NW, Room 222
Washington, D.C. 20554
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: GN Docket No. 96-113

Dear Mr. Caton:

In its comments in the above-referenced proceeding, OpTel suggested that the Commission apply its "fresh look" doctrine to perpetual exclusive service contracts between franchised cable operators and multiple dwelling units ("MDUs"). As OpTel explained in its comments, perpetual exclusive contracts, which were common prior to there being any significant competition in the local multichannel video programming distribution ("MVPD") market, pose a significant barrier to entry to small businesses and other niche service providers seeking to compete in the MVPD market.

In their reply comments, the National Cable Television Association, Inc. ("NCTA") and Tele-Communications, Inc. ("TCI"), opposed this suggestion. Aside from their general objection to any suggestion that might undermine the current market dominance of franchised cable, the responses both of NCTA and TCI perpetuate a fundamental misunderstanding of the relief sought by OpTel. Consequently, OpTel herein submits this *ex parte* letter to clarify a few key points.

First, NCTA has attempted to obscure the issue by confusing exclusive contracts, which are pro-competitive in that they allow new service providers to recoup the investment required to overbuild or rewire an MDU, with perpetual exclusive contracts, which have no pro-competitive justification. See NCTA Reply at 3. Thus, there is considerable difference between the contracts that

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OpTel and other alternative MVPD providers use and the perpetual contracts that were commonly used by franchised cable operators in the 1980s.

Second, both NCTA and TCI claim that "there is no such thing as a perpetual MDU contract." NCTA Reply at 3; TCI Reply at 3. Ironically, while disclaiming the existence of perpetual contracts before the FCC, TCI is seeking to enforce such a contract in California. That contract, a copy of which was attached to OpTel's comments, provides that the agreement will "continue in effect consistent with the term of the franchise and renewal of the franchise." Further examples are attached hereto. In any event, if, as NCTA and TCI claim, perpetual contracts do not exist, they should have no objection to fresh look, which would apply only to perpetual service contracts.

Third, TCI's alternative argument that its perpetual contracts were "freely negotiated" simply ignores the market realities. See TCI Reply at 3-4. At the time most of these contracts were executed in the 1980s, there not only was no competitor to franchised cable for MVPD service, there was not even the prospect of such competition in the near future. Thus, given a choice of taking cable service in perpetuity or foregoing MVPD services entirely, it is not surprising that many MDU managing agents succumbed and agreed to obligate themselves to a perpetual service contract.

Today, while most franchised operators remain dominant in the market, customers have become aware of significant alternatives to franchised cable. Consequently, there is little risk that franchised operators will continue to be able to coerce MDU managing agents into perpetual service contracts. Nonetheless, as OpTel explained in its comments, the perpetual contracts already in effect are thwarting efforts of new alternative MVPD service providers to enter the market.

If, as TCI claims, MDU owners and managers are satisfied with their cable service, TCI and the franchised cable interests should have nothing to fear from fresh look. Fresh look does not guarantee that OpTel or any other multichannel video distributor will be selected to provide service to any MDU. Fresh look merely ensures that customers have an opportunity to choose among MVPD service providers now that alternatives to franchised cable are, or soon will be, available in the market. No party truly interested in promoting competition should oppose such a proposal.

Respectfully,



Henry Goldberg
Attorney for OpTel, Inc.

cc: Meredith Jones
John Logan



Relea
12-9-

Copley/Colony
Cablevision of Costa Mesa, Inc.
200 Paularino Avenue
Costa Mesa, CA 92626
714-549-4242

CABLE TV WIRING AGREEMENT

THIS AGREEMENT is entered into between COPLEY/COLONY CABLEVISION and the parties identified below.

Property Name VILLA MARTINIQUE

Address 2855 Pinecreek Drive, Costa Mesa, CA 92626 # of Units 714

COPLEY/COLONY CABLEVISION is hereby granted an exclusive license to construct, operate, and maintain the System, and to provide both Basic and Premium Services. Owner shall not, during the term of this Agreement, allow, construct for, or provide any other cable television service or pay television service at the Complex, or any portion thereof, without the prior written consent of COPLEY/COLONY.

The term of this Agreement shall commence on the date hereof and continue in effect consistent with the term of the Franchise and renewal of the Franchise as granted by the City of Costa Mesa or the County of Orange.

COPLEY/COLONY at all times shall retain title to and control of the System installed, maintained or used pursuant to the terms of this Agreement at no cost to the property or the owner. It is specifically agreed that the System so described shall not be considered as fixtures to the complex. At the expiration or termination of this Agreement, COPLEY/COLONY shall retain title to and control of the distribution equipment comprising the System, and at its option may either remove same from the Complex, or abandon such equipment in place.

COPLEY/COLONY CABLEVISION accepts full responsibility for any and all damage that may result from the construction and installation of its equipment, and will provide proof of full liability and worker's compensation coverage upon request prior to beginning work.

Subscription of the cable service by individual residents shall be on a voluntary basis, and all billing will be the responsibility of COPLEY/COLONY CABLEVISION.

The owner/manager of the property described below agrees that access will be provided at all reasonable hours to authorized personnel of COPLEY/COLONY CABLEVISION for the express purpose of installation, service, maintenance, and marketing of the cable TV service. Reasonable hours are defined as: For Marketing, from 9 A.M. to 9 P.M.; for Installation, Maintenance and Service, 9 A.M. to 5 P.M., unless specifically requested by a resident.

From	To
Co	Co
Phone	Dept
Fax	Fax

Pa. 2 (Two)
Cable TV Wiring Agreement

Owner understands that COPLEY/COLONY has made a significant capital investment in installing the System in the Complex, and agrees that, during the term hereof, Owner will cause any purchaser of the Complex to assume, as assignee of this agreement, all of the obligations of the Owner hereunder; COPLEY/COLONY will likewise cause any purchaser of the cable television system to assume all the obligations of COPLEY/COLONY hereunder. This contract may not be otherwise ~~by~~ assigned except by written consent of the other party hereto, which consent shall not be unreasonably withhold. The promises, covenants, benefits, and burdens hereunder shall run with the property constituting the Complex which is the subject of this agreement.

The party signing below is authorized to execute this agreement on behalf of the owner(s) and/or management.

* This agreement is contingent upon final installation plan approval by authorizing party prior to construction.



Authorizing Signature - Property

2/18/87

Date

Henry L. Gats, President

Print Name & Title



Authorizing Signature - Copley/Colony

2-12-87

Date

Robert D. Ashbrook, General Manager

Print Name & Title

Property Mgr: Mr. Henry L. Gats

On Site Contact: _____

Address: 1425 Village Way

Address: _____

City: Costa Mesa, CA

Zip: 92626

City: _____

Zip: _____

Phone No.: _____

Phone No.: _____

Best time to contact: _____

Best time to contact: _____

COMMERCIAL RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of this 22nd day of February, 1996, by and between Olen Development Corporation ("OWNER"), and Cable TV of Coral Springs, its successors and assigns ("CATV").

1. OWNER hereby grants CATV the exclusive right to construct, own, operate and maintain a cable television system ("SYSTEM") within and for the residents of the apartment or condominium or commercial building or buildings consisting of 240 units located at the northeast corner of Atlantic Blvd and Lakeview Drive, in the project known as Club Mira Lago Phase II ("DEVELOPMENT"), in the City of Coral Springs, State of Florida.

2. OWNER shall grant to CATV the exclusive right of access for construction, installation, maintenance, sales and disconnections in and for the SYSTEM for the term of this Agreement. The term of this Agreement shall coincide with the term of CATV's franchise with the City of Coral Springs.

3. CATV shall construct, own and maintain the SYSTEM in the DEVELOPMENT at its own expense. The ownership of all parts of the SYSTEM shall be and remain the property of CATV throughout the term of this Agreement.

4. The residents of the DEVELOPMENT opting to subscribe to the cable television service will be billed individually by CATV at the same rate applicable for other residential subscribers in the City of Coral Springs.

5. OWNER'S electrical contractor will prewire a cable tv outlet in each bedroom and one outlet in the living room of each unit, along with installing an individual service drop and 3/4" PVC conduit from each unit to a central point outside each building. In exchange for this service, and the above stated grants and rights CATV will:

a. Reimburse OWNER - \$120 per unit.
Payment schedule - \$14,400 at execution of this agreement,
\$14,400 within 2 wks of last certificate
of occupancy.

b. CATV will supply sufficient RG-6 cable, face plates, and 3/4" PVC conduit to OWNER'S electrical contractor to complete the CATV prewire portion of this project.

c. CATV will construct its distribution system to a position outside each building that is predetermined by the OWNER.

6. Also, in exchange for this Agreement, CATV makes the following offerings to OWNER:

a. A free advertising panel on Channel #11 (our local community channel) for a year. Your panel would come up about once an hour, twenty four hours a day for a year.

b. If OWNER furnishes CATV a 30 second video ad for this project, CATV agrees to run the ad twice a day for 90 days. It will air at random on the following channels: CNN, VH-1, USA, A & E, Discovery, Sunshine, MTV, Lifetime, ESPN, TNT, Nashville Network and Headline News.

c. A basic cable outlet will be offered at no charge to the resident manager's unit, and one other employees unit as designated by the resident manager.

d. A basic cable outlet will be offered at no charge to the recreation room.

e. A free install will be offered to all 01 customers, (01 = 1st customer in each unit).

7. CATV and OWNER agree to indemnify and save each other harmless against any and all loss and expense including attorney's fees and court costs by reason of liability imposed or claimed to be imposed by law upon either party for damages because of personal injuries, including death, or on account of damage to property sustained by any person or persons arising out of in whole or in part the negligence or any other ground of legal liability (including violations of any duty imposed by a Statute, Ordinance or Regulation), as a result of the actions of the other party, its subcontractors, employees or agent or any of them or any other person or organization upon whom such duty is imposed. CATV further agrees to abide by all Statutes, Ordinances and Regulations imposed by any Federal, State, or Local regulatory body pertaining to the operation of the SYSTEM. CATV further agrees to furnish upon request a copy of its insurance coverage, including workers compensation, employers liability, comprehensive general liability and property damage, said insurance to be issued in an amount not less than \$1,000,000.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first written above.

WITNESSES:

Judy Miller

OWNER:

By: D. M. L. f. 3/11/96

Title: VP

WITNESSES:

Michelle Fitzpatrick

CATV:

By: J. R. Schell

Title: V. P. ENGINEERING